

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 92 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SURESHKUMAR JAGDISHCHANDRA &CO

Versus

PRABBHUDAS HIMMATLAL

Appearance:

MR PM THAKKAR for Petitioner
MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/08/2000

C.A.V.JUDGEMENT

1. This is tenant's revision under section 29(2) of Bombay Rent Act against the non-current findings recorded by the lower appellate court and reversing the judgment and decree of the trial court refusing to pass decree for

eviction against the revisionist.

2. The brief facts are that the shop in dispute is owned by the plaintiff-landlord-Prabhudas Himmatlal. It was let out by him to the defendant firm--M/s Sureshkumar Jagdishchandra & Co on monthly rent of Rs.65/-. It was alleged that the defendant had illegally sub-let the suit accommodation or had transferred or assigned interest in the suit accommodation to someother persons who are occupying the shop and running their own business. This was one of the grounds seeking decree for eviction of the tenant. Another ground was that the tenant had not used the premises in suit continuously for a period of six months before the institution of the suit, hence, also he was liable to be evicted. The third ground was that the suit shop is reasonably and bonafide required by the plaintiff-landlord to carry on his own business and on these three grounds eviction of the tenant was sought.

3. The suit was resisted by the defendant-tenant-firm denying all these three allegations and also raising a dispute of standard rent. The dispute of standard rent is not material because the decree for eviction has not been sought on the ground that the tenant failed to pay more than 6 months rent after service of notice of demand and within a period of one month of service of such notice. It was, however, denied by the tenant that the premises was sub-let or that it was not used by the tenant for a period of six months before the institution of the suit. It was also denied that the suit shop is reasonably and bonafide required by the plaintiff-landlord for his own use to run his business.

4. The trial court, after considering the evidence adduced by the parties concluded that the plaintiff failed in establishing all the three grounds on which eviction of the defendant-tenant was sought. Consequently, the suit for eviction of the tenant was dismissed by the trial court. The trial court, however, fixed the standard rent at Rs.55/- per month which is not in dispute in this revision.

5. Feeling aggrieved the landlord filed appeal. The lower Appellate Court on careful consideration of entire evidence on record disagreed with the findings recorded by the trial court on three issues and held that the landlord succeeded in establishing that the suit shop was illegally sub-let or interest therein was transferred or assigned, in any manner, by the tenant to other persons. It also found that the suit shop was not used by the

tenant for continuous period of six months before the institution of the suit. It further found that the personal need of the landlord for the suit shop was reasonable and bonafide, and that in case decree for eviction is refused, the landlord would suffer greater hardship. On these findings, the suit for eviction of the defendant was decreed, hence, this revision.

6. Shri P.C. Kavina, learned Advocate for revisionist and Shri M.S.Shah for the respondent were heard. Judgments of the two courts below were read over before me so also the material on record, namely, the statements of witnesses and the documents.

7. Shri Kavina contended that the judgment of the trial court is more sound and based on proper appreciation of evidence on record, hence, it should not have been disturbed by the appellate court. It is, however, difficult to agree with this contention. The judgment of the appellate court shows that it was a Regular Civil Appeal under section 96 of Civil Procedure Code against the judgment and decree of the trial court in Regular Civil Suit No.233/91. The appellate court had right to examine the evidence on record for coming to conclusion whether the evidence was or was not properly appreciated by the trial court. After going through the judgment of the lower appellate court it is difficult to uphold the contention of Shri Kavina that the lower appellate was not justified in reversing the judgment and decree of the trial court. It is crystal clear from the judgment of the lower appellate court that the trial court did not properly appreciate the oral and documentary evidence on record. Consequently, interference by the lower appellate court was perfectly justified.

8. It is now to be seen whether the judgment and decree of the lower appellate court can be sustained in this revision. This is a revision under section 29(2) of the Bombay Rent Act where the scope of interference is very limited. Interference in non-concurrent finding is not permissible simply because it is a case of non-current finding. If the lower appellate court was justified in re-appraising the evidence it would be justified in coming to conclusion different than that arrived at by the trial court. The revisional court, under such situation, will be reluctant in interfering with the judgment and decree of the lower appellate court simply on the ground that it is a case of non-current finding. In case, it is found that the judgment and decree of the lower appellate court is perverse or

contrary to law or is based on misappreciation of oral or documentary evidence on record or is based on inadmissible evidence, certainly revisional interference would be justified.

9. It is, therefore, proposed to examine the judgment of the lower appellate court.

10. The first contention of Shri Kavina has been that the decree for eviction could not be passed simultaneously on the ground of sub-letting and non-user for a period of 6 months before the institution of the suit as provided under sections 13(1)(e) and 13(1)(k) of the Bombay Rent Act.

11. I find force in the contention of Shri Kavina. In so far as plaintiff-landlord is concerned, he may seek eviction of the tenant on several grounds. He can seek eviction on the ground of sub-letting, and in the alternative, he can plead that if sub-letting is not established, or transfer or assignment of interest of the tenant is not established, a decree may be passed for eviction of the tenant on the ground of non-user for a period exceeding six months before the institution of the suit. Such alternative prayer is not prohibited. However, the court can not pass decree on the ground of sub-letting, transfer or assignment of interest of the tenant otherwise and also on the ground of non-user of the premises for a continuous period of six months before the institution of the suit. The reason is that such a decree will be contradictory, in the sense, that if exclusive possession has been transferred by the tenant-in-chief to the sub-tenant or to some stranger, the sub-tenant or stranger will be occupying the premises, and in that event the tenant will not have control over the premises and as such he could not have used the premises for a statutory period of six months before the institution of the suit. As such, in my opinion, the learned judges of the courts below were in obvious error in passing a blanket decree for eviction under sections 13(1)(e) and 13(1)(k) of the Bombay Rent Act.

12. It may also be mentioned that if eviction was sought on three grounds, it was not necessary for the plaintiff to establish all the three grounds. If he succeeded in establishing even one ground, decree for eviction could be passed. In this light, we have to examine the judgment of the lower appellate court.

13. So far as the decree for eviction on the ground of sub-letting is concerned, obviously, sub-letting is not proved. For establishing illegal sub-letting, it is for the landlord to establish that the tenant has parted with exclusive possession of the demised premises to the sub-tenant and that such transfer of exclusive possession was for valuable consideration. In the instant case, transfer of possession for valuable consideration is not established. Merely by establishing that some outsider is in possession of the demised premises it can not be said that it is a case of illegal sub-letting.

14. The provisions of Section 13(1)(e) are wide enough to include other two grounds, viz., assignment or transfer of interest in the tenanted accommodation by the tenant in chief. It is not confined merely to illegal sub-letting, but it also includes assignment or transfer, in any manner, tenant's interest in the whole or part of the premises. Consequently, for succeeding in the suit, the landlord has to establish assignment or transfer of interest of the tenant to third person, but he is not obliged to establish in such cases that such transfer was for valuable consideration. Such an assignment or transfer, even if gratuitous or without consideration will fall within the mischief of Section 13(1)(e) of the Bombay Rent Act (for short "Act"). Of course, from the evidence on record, passing of consideration is not established nor it was found so specifically even by the lower appellate court. The question for consideration is whether it is a case of transfer or assignment of interest of the tenant-in-chief to some other person. The trial court, from the evidence on record, observed that some witnesses were unable to tell the name of the sub-tenant. Even on that ground no adverse inference could be drawn by the trial court against the plaintiff. The appellate court has considered the entire evidence, oral as well as documentary. The suit premises was let out not to any individual, but to a firm, known as M/s Sureshkumar Jagdishchandra & Co. Rent note-Exh.30 clearly establishes this fact. Rent note further shows that the premises was taken on lease for and on behalf of the firm. Clause 4 of the rent note provides that the partners are to utilise the premises for the business of the firm and that they shall not be entitled to sub-let the premises or transfer or assign their interest in the suit premises. Thus, there is specific prohibition in the rent note-Exh.30 against sub-letting or transfer or assignment of tenant's interest in the suit premises. Thus, in face of this prohibition, if either subletting takes place or assignment or transfer of interest of the tenant in the suit premises to third person is

established, then, this itself is a ground for passing decree for eviction as it is also a ground for eviction of the tenant for committing breach of the terms of tenancy.

15. The lower appellate court has considered the entire oral evidence on record and has come to ultimate conclusion that the suit premises is not being used or occupied by the defendant-firm, but the same is being used by certain relatives of the partners of the defendant firm. The lower appellate court found that Pratap and Haresh are occupying the premises now. It further found that one sign board is hanging outside the demised premises showing the name of the shop as M/s Rupam Jewellers. It is not in evidence that the tenant-firm was carrying on business in the name and style of M/s Rupam Jewellers. On the other hand, the rent note-Exh.30 shows that the defendant-firm was carrying on business in the name and style of M/s Sureshkumar Jagdishchandra & Co. Jagdishbhai admitted that the premises is occupied by Pratap and Hareshbhai. It is also admitted by Jagdishbhai that he and Sureshkumar, the other partner of the defendant firm have settled at Dubai. The lower appellate court considering the evidence on record concluded that though they are staying at Dubai for the last 35 years, they are casually coming to Rajkot under passport. Even then they are not using the suit accommodation for carrying on their business. From oral evidence on record the lower appellate Court found that even these two persons, namely, Pratap and Haresh are not regularly opening the shop, rather shop styled as M/s Rupam Jewellers is being opened for one or two hours a day and mostly it is being kept closed. It is not established by the defendant that Pratap and Hareshbhai are carrying on business on behalf of defendant firm. They could not establish it so more particularly when the sign board outside the shop is showing the name of M/s Rupam Jewellers. Obviously, it is a different concern. The lower appellate court after discussing the entire oral evidence, rightly concluded that it is clearly established that the premises is bearing the sign board of M/s Rupam Jewellers, and it is further clear that the shop is not being opened regularly and some boys open the shop occasionally, and that too for a short period in a day. It is further found by the lower appellate court from the evidence that the partners of the defendant-firm have shifted and settled at Dubai and in other Gulf countries. Admission is best piece of evidence against its maker. Unless it is explained to be mistaken or erroneous it can safely be used against the maker. Jagdishchandra has admitted that he and

Sureshkumar are staying at Dubai. He has stated about the renewal of visa every year. He has further admitted that for the last five years he and Sureshkumar are not dealing with Silver articles and no account books are maintained. The lower appellate court was thus justified in concluding from the evidence on record that the premises were taken on lease in the name of the defendant firm, but later on since last 35 years the partners had settled at Dubai and other Gulf countries and therefore the board is also changed and that there is evidence that Pratap and Hareshbhai who are related to the partners of the defendant firm are carrying on their business activities in the aforesaid premises in the name and style of M/s Rupam Jewellers. On these findings, the lower appellate Court was justified in holding that the tenant in chief had transferred or assigned, in any other manner, its interest in the disputed shop. Consequently, decree for eviction could be passed and was rightly passed by the lower appellate Court under section 13(1)(e) of the Act.

16. The lower appellate Court was, however, not justified in granting decree for eviction under section 13(1)(k) of the Act for the reasons stated earlier. Further, if it was a case of assignment or transfer of interest in the disputed shop to Pratap and Haresh who are in exclusive control and possession of the suit premises, no occasion could arise for passing decree for eviction on the ground of non-user. On these two grounds, the decree for eviction could not have been simultaneously passed. However, since from the evidence on record it is found that the tenant-in-chief had shifted to Dubai since last 35 years after transferring interest in the tenancy rights to Pratap and Hareshbhai, it can not be said that it was a case of non-user of the premises by the tenant during statutory period. To that extent, the contention of Shri Kavina requires to be accepted.

17. The last point for consideration is whether the decree for eviction under section 13(1)(g) was justified or not. The lower appellate Court on this point also has considered the entire evidence on record and has concluded that the landlord is in need of the suit shop reasonably and bonafide for running his own business in Silver articles for the process locally known as "cholkam". The lower appellate Court found from the evidence on record that the landlord had means to start such business and was also doing Silver business in a mobile fashion because there is no shop in his possession. The lower appellate Court rightly observed

that even if before letting-out the accommodation to the defendant, the landlord was running grocery business in the shop, it does not necessarily follow that the need of the landlord is not genuine or bonafide or reasonable. From the statement of the landlord it is clear that it is not his mere desire to obtain possession of the suit shop for his business, rather it is something in the nature of personal and pressing need of the landlord which compelled him to file the suit for eviction on this ground. The need of the landlord, in the facts and circumstances of the case, can not be said to be unreasonable or malafide.

18. The next question for consideration is that if the need of the landlord is found to be genuine, reasonable and bonafide, it is yet to be seen who will suffer greater hardship, if the decree for eviction is passed or is refused. It has already been discussed above that for the last 35 years the tenant in chief is not occupying the suit shop, rather interest in the tenancy has been assigned or transferred to two persons, namely, Pratap and Haresh who are running the business in the name and style of M/s Rupam Jewellers. If the defendant-firm is not carrying on business in the suit shop for the last 35 years, by no stretch of imagination, it can be said that the tenant-in-chief would suffer greater hardship, if the decree for eviction is passed against him. The partners of the defendant firm have shifted to Dubai since last 35 years. Their mere visit to Rajkot once or twice in a year will not make any difference in the situation, and it can not be said that the tenant-in-chief will suffer greater hardship, if the decree for eviction is passed. On the other hand, if the decree for eviction is refused the landlord would suffer greater hardship because from the evidence and findings of the appellate court it is clear that he has no shop in his possession and that he is carrying on business in Silver articles and is also intending to instal machines for "cholkam" in the suit shop. Thus, greater hardship will be caused to the landlord in case decree for eviction is refused. The lower appellate Court was, therefore, justified in passing decree for eviction under section 13(1)(g) of the Act.

19. No other point was pressed before me. I do not find any merit in this revision. The revision application is hereby dismissed. No order as to costs.

